

charged had aliened the land, *bona fide*, before any action brought, the land in the hands of the purchaser was not subject to any charge or execution. A bond is not properly an incumbrance upon land; for it does not follow the land like a judgment. But if an action of debt be brought against the heir upon the obligation of his ancestor, and the heir aliens the land pending the suit; yet shall the land, which he had at the institution of the suit, be charged; because, the action was brought against him in respect of the land. Hence it appears, that the common law lien of a bond creditor as against the heir, relates to the institution of the suit and fastens on the land from that time. Consequently, where there were two creditors, *A.* and *B.* of *J. S.* whose heir was bound, and who had lands by descent. And *A.* brought suit and obtained judgment by default on the first of March, 1686, upon which he issued a general *elegit* against all the lands of the heir, a moiety of which was delivered to him accordingly. And *B.* who had instituted his suit on the first of July, 1684, and obtained a special judgment against the assets confessed by the heir on the first of September, 1686. It was held, that although *B.*'s judgment was subsequent to *A.*'s, yet *B.*'s having relation to the institution of the suit, which was commenced before *A.* obtained his judgment, it operated as a lien from that time, and therefore must be first satisfied. (*t*)

Land in the English colonies was considered as partaking much more than in England of the nature of mere commercial property. (*u*) It is said, that there are instances of colonial estates having been sold under the authority of the Court of Chancery of England; according to the law of which court, where a bond or judgment creditor was under the necessity of going into equity to reach the real estate of his debtor, he would not be compelled, as at law, to wait until he could, as under an *elegit*, obtain satisfaction according to an extended value; but the court would accelerate the payment by ordering a sale of a moiety of the estate or so much as might have been extended at law. (*w*)

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(*t*) Co. Litt. 102; Sir William Harbert's, 3 Co. 12; *Gree v. Oliver*, Carth. 245; Bac. Abr. tit. Execution, I; 2 Blac. Com. 340, n. 71; Bull. N. P. 175; 2 Harr. Ent. 689.—(*u*) Attorney-General v. Stewart, 2 Meriv. 153.—(*w*) *Roberdeau v. Rous*, 1 Atk. 544; *Higgins v. The York Buildings Company*, 2 Atk. 107; *Kinaston v. Clark*, 2 Atk. 206; *Stonehewer v. Thompson*, 2 Atk. 441; *Stileman v. Ashdown*, 2 Atk. 481, 609; S. C. Amb. 13; *Curtis v. Curtis*, 2 Bro. C. C. 633; *Leaby v. Dancer*, 12 Cond. Chan. Rep. 164.